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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT

PAPER NUMBER

3727

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16

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/992,328

Applicant(s)

BERGERON, BRYAN

Examiner

Stephen J. Castellano

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 11-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: ____

Art Unit: 3727

Claims 11-17 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the flow channel extending along an outer surface of the fluid diverter member as stated in claims 3 and 8 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claims 3 and 8-10 are objected to because of the following informalities: Claims 3 and 8 recites structure pertaining to the flow channel extending along an outer surface of the fluid diverter member which has not been shown in the drawings. Appropriate correction is required. Appropriate correction may include the cancellation of the claim(s) or the removal of the objectionable portion of the claim(s). Do not submit new matter.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 3 and 8-10 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 3 and 8 recite a flow channel extending lengthwise along as outer surface.

Art Unit: 3727

The only flow channels designated in the specification by reference sign 12 are substantially inner upper surfaces.

Note that the claim rejection, the claim objection and the drawing objection can be resolved by changing the word “outer” in line 2 of claim 3 to “inner” or “upper” and by changing the word “outer” in line 12 of claim 8 to “inner” or “upper.”

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Neville and Dixon, Sr. et al. (Dixon).

Neville discloses a drinking container which has a structure capable of assisting a disabled person by reducing the degree of tilt necessary to drain fluid from the container because the container includes a sloped or tapered side wall, the container comprises a fluid holding vessel and a lid, the vessel includes an upper rim having an opening through at least one sipping region (22, 56), a fluid diverter member (tapered side wall) contiguous with an inner surface and bottom of the vessel, the diverter member sloping downwardly substantially from the sipping region toward an opposing side of the vessel such that when the vessel is pivoted upward about the sipping region, the diverter member compels fluid through the sipping region, the diverter is wedged shaped (see portion 28), a flow channel (upper portion of side wall near 28) extends lengthwise along an outer surface of the fluid diverter member (as the upper inner surface of portion 28 extends outwardly to the degree that the upper inner surfaces of flow channels 12 of

Fig. 1C, 2B, 3B do), an extension spout is formed by the uppermost portions of the portion 28, the lid is removable and seals the upper rim, the spout is configured to extend the fluid diverter member upward and outward at 54 to thereby assist the diverter member in compelling liquid fluid through the sipping region.

Dixon discloses a drinking container which has a structure capable of assisting a disabled person by reducing the degree of tilt necessary to drain fluid from the container because the container includes a sloped or tapered side wall, the container comprises a fluid holding vessel and a lid, the vessel includes an upper rim having an opening through at least one sipping region (the upper rim), a fluid diverter member (tapered side wall) contiguous with an inner surface and bottom of the vessel, the diverter member sloping downwardly substantially from the sipping region toward an opposing side of the vessel such that when the vessel is pivoted upward about the sipping region, the diverter member compels fluid through the sipping region, the diverter is wedged shaped (pick a triangular, trapezoidal or any other wedge shaped portion of the side wall), a flow channel (upper portion of side wall) extends lengthwise along an outer surface of the fluid diverter member (as the upper inner surface of the side wall extends outwardly to the degree that the upper inner surfaces of flow channels 12 of Fig. 1C, 2B, 3B do, the lid is removable and seals the upper rim, the spout (15, 15A) is configured to extend the fluid diverter member upward and outward to thereby assist the diverter member in compelling liquid fluid through the sipping region 15A.

Any portion of the substantially cylindrical outer wall can be grasped and thus defines one or more handles positioned at any point along the outer side wall surface.

Claims 1-6 and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Watson.

Art Unit: 3727

Watson discloses a wedged-shaped fluid diverter member (side wall and/or floor portion 18, 18' shown in Fig. 4 and 6) wherein upper extremities of the side wall are thicker than portions therebelow, the diverter member is contiguous with the inner surface and the bottom of the vessel, the diverter member sloping downwardly from the sipping region of the extension spout toward an opposing side of the vessel, a flow channel (side wall or floor portion 18, 18' shown in Fig. 4, 5 and 6) extending lengthwise along an outer surface (insofar as the outer surface is understood).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 5, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neville or Dixon in view of Rosen.

Neville and Dixon disclose the invention except for handles which extend outwardly from the outer surface of the vessel at 90 and 270 degree positions. Rosen teaches two handles positioned substantially at 90 and 270 degree positions from an extension spout or sipping region. It would have been obvious to add the handles to improve the users grasp.

Applicant's arguments filed March 25, 2003 have been fully considered but they are not persuasive.

Applicant's remarks pertaining to the drawing objection as having been decided by the Decision, paper No. 12, are not well taken. The statements made in paragraph 5 of the Decision, paper No. 12, pertaining to the fluid diverter member characterize the examiner's position taken

Art Unit: 3727

in the first action, paper No. 5, and do not amount to a decision to reverse the examiner's drawing objection to not showing the flow channel extending lengthwise along an outer surface of the fluid diverter member.

A fluid diverter member is only required to be capable of diverting fluid, any surface accomplishes a fluid diverting function. Applicant only generally states that the disclosed fluid diverter member of the present invention as shown in the drawings and described in the specification differs markedly from Neville and Dixon which show uniformly shaped inner walls. Applicant should specifically point out any claim difference. The fluid diverter member of Watson is contiguous with the bottom of the vessel and includes a sipping region.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.

Art Unit: 3727

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.



Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc
May 29, 2003